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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

OCT - 5 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Eligibility for the Specialized ) GN Docket No. 94-90  
Mobile Radio Services )  
and Radio Services in the )  
220-222 MHz Land Mobile Band )  
and Use of Radio Dispatch )  
Communications )  
 )  
To: The Commission )

COMMENTS OF  
POLAR COMMUNICATIONS MUTUAL AID CORPORATION

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## SUMMARY

Polar Communications Mutual Aid Corporation ("Polar") supports the Commission's proposal to eliminate the existing restriction against licensing Specialized Mobile Radio ("SMR") systems to wireline telephone common carriers.

Elimination of the prohibition will benefit the public by enhancing SMR service and wireless competition in Polar's service area of North Dakota, as well as the many other rural areas which remain unserved or underserved by SMR operations. Lifting the ban will allow wireline telephone companies like Polar to fill in the rural gap, providing much-needed SMR dispatch communications to serve farm operations and fulfill business needs. For those rural residents who live or travel outside reliable cellular coverage areas, allowing wirelines to offer SMR service will provide a source of wireless communications. For the many others who have access to but who cannot afford the generally higher cellular service rates, wireline provision of SMR services will provide an attractive option to cellular. Also, because it can be provided on a smaller geographic scale than cellular and PCS services, SMR service constitutes a wireless alternative even better than cellular or PCS for both rural telephone companies and rural residents.

Additionally, the Commission's rationale for the wireline restriction has been eliminated by changes in the SMR industry, and by Congressional mandate for regulatory symmetry among similar mobile services. Indeed, due to Congress' recent amendments to

Section 332 of the Communications Act, a basis upon which to distinguish private and common carrier provision of SMR services no longer exists. Congress has additionally preempted all state entry regulation and most state rate regulation of CMRS services, and the exemplary record of wireline telephone companies in furnishing non-discriminatory interconnection to competing cellular operators demonstrates their ability to do the same for competing SMR service providers. Further, today's principal SMR providers have completely surpassed the rural telephone companies in size. With these developments, the Commission's original concerns about preserving historical distinctions between private and common carrier services, shielding SMR providers from state entry and rate regulation, preventing discriminatory interconnection practices, and ensuring that SMRs are available as a business opportunity for small entrepreneurs have been eliminated, and there is therefore no remaining rationale for maintaining the wireline prohibition on the provision of SMR services.

In conjunction with the elimination of the wireline restriction on SMR services, Polar also supports the elimination of the common carrier restriction on the provision of dispatch services. Residents of North Dakota and other rural areas stand to benefit greatly by gaining access to dispatch services. Additionally, in light of regulatory parity, retention of the common carrier dispatch prohibition is nonsensical, for no common carriers will remain to provide dispatch services, once regulatory parity is implemented.

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**COMMENTS OF  
POLAR COMMUNICATIONS MUTUAL AID CORPORATION**

Polar Communications Mutual Aid Corporation ("Polar"), by its attorneys, hereby submits its Comments in support of the captioned Notice of Proposed Rule Making, released August 11, 1994. Specifically, Polar believes that Section 90.603(c) of the Commission's Rules should be modified to eliminate the existing restriction against the licensing of Specialized Mobile Radio ("SMR") systems to wireline telephone common carriers because: (a) wireline entry represents the best hope at this time for the rapid development of needed SMR services in unserved and underserved rural areas; and (b) the Commission's rationale for restricting wireline entry in 1974 no longer exists. In addition, Polar supports termination in its entirety of the current prohibition against the provision of dispatch service by common carriers.

**Interest Of Polar**

Polar is an independent local exchange carrier ("LEC") serving twenty-two (22) exchanges (approximately 8,500 access lines) in rural, northeastern North Dakota. On November 23, 1993, Polar filed a "Petition For Rule Making" requesting amendment of Section

90.603(c) of the Rules to eliminate its prohibition against wireline carriers holding SMR system licenses. Polar continues to desire to provide SMR service in and around its telephone service area without the unnecessary regulatory restraints imposed by the current Section 90.603(c) eligibility restriction.

**Elimination Of The Wireline Restriction Will Enhance  
SMR Service And Wireless Competition In Rural Areas**

The Commission is well aware that there long has been substantial demand for, and growth of, SMR facilities in the nation's metropolitan areas. Amendment of Part 90, Subparts M and S, 3 FCC 1838, 64 RR 2d 1042, 1043 (1988). Because applications for metropolitan SMR facilities have far exceeded the numbers of channels available, the Commission has been forced to establish lengthy waiting lists for 800 MHz SMR frequencies in most metropolitan areas, and to conduct lotteries for 900 MHz SMR frequencies in the 50 large urban areas where they have been made available.

The situation has been much different in rural areas, many of which have remained unserved or underserved from an SMR standpoint. The Commission has attempted to encourage the growth and development of rural SMR service by, for example, permitting rural SMR licensees to expand their trunked systems without meeting loading requirements. 47 C.F.R. §90.631(d); Amendment of Part 90, Subparts M and S, supra at para. 71. However, to date, relatively few SMR providers have seen fit to make the substantial investments necessary to bring either traditional or advanced SMR services to rural areas.

Polar believes that there are substantial, unmet needs for SMR service in rural areas. For example, many North Dakota farmers and ranchers could operate much more efficiently if they had access to reliable and reasonably-priced SMR dispatch communications that would permit them to maintain contact with their trucks, tractors, combines and other vehicles throughout the day. Likewise, interconnected SMR services represent an attractive service option for rural residents who live or travel outside reliable cellular coverage areas, or who cannot or do not want to pay generally higher cellular service rates.

In the cable television sector, both the Congress and the Commission determined that restrictions on wireline telephone company participation had to be lifted in order to expedite the provision of cable service to rural areas. Cable Communications Act Rules, 58 RR 2d 1, 19 (1985). The same is true with respect to SMR service. Polar and other rural telephone companies stand ready, willing, and able to construct and operate SMR facilities in presently unserved rural areas, and/or to establish competitive SMR services in rural areas that are currently served by one (or, in a few cases, two) SMR provider(s).

Polar and other independent rural telephone companies have a proven record of furnishing modern, high-quality service to their wireline customers. For example, independent rural telephone companies have installed upgraded digital switching facilities at a significantly faster pace than several of the larger Regional Bell Operating Companies ("RBOCs"). Edwin B. Parker & Heather E.

Hudson, Electronic Byways: State Policies for Rural Development Through Telecommunications, 235-38 (The Aspen Institute, Westview Press, 1992). These same rural telephone companies can be relied upon to provide the capital and expertise necessary to develop existing and future SMR services within their areas.

From the standpoint of rural telephone companies, SMR facilities constitute a very attractive and flexible option for meeting wireless service needs within their operating areas. Unlike cellular systems that have been licensed on a Metropolitan Statistical Area ("MSA") or Rural Service Area ("RSA") basis -- and unlike Personal Communications Service ("PCS") systems that will be licensed on a Major Trading Area ("MTA") or Basic Trading Area ("BTA") basis -- some SMR facilities can still be located and configured so as to serve a more limited geographical area such as the service area of a rural telephone company. In other words, rural telephone companies can design, finance, build and operate their own SMR systems to serve the areas where local residents primarily need wireless service, and do not have to participate in regional joint ventures or partitioning arrangements in order to enter the SMR portion of the wireless business.

Finally, Polar and many other rural telephone companies are locally owned and operated concerns -- in fact, many are cooperatives owned by their customers -- that are but a fraction of the size of large, national SMR operators such as Nextel, Motorola and E.F. Johnson. These rural telephone companies have survived to date in the wireline industry -- and will be able



to compete in the SMR industry -- only by remaining aware of the needs of their local customers, and by designing and providing services that directly meet those local needs. Such localized SMR service will provide options and benefits not heretofore available to residents of many rural areas.

In sum, elimination of the present wireline/SMR eligibility restriction represents the best hope at this time for the rapid development of needed SMR services in unserved and underserved rural areas. Rural telephone companies have a proven record of furnishing both basic and advanced wireline services to meet the local needs of their service areas, and can be relied upon to do the same with respect to wireless services. Because SMR service can be provided more flexibly and on a smaller geographic scale than cellular and PCS services, it is better able to meet the service needs and capabilities of both rural telephone companies and rural residents.

**The Commission's Rationale For  
The Wireline/SMR Eligibility Restriction No Longer Exists**

In its Order, 7 FCC Rcd 4398 (1992), terminating PR Docket No. 86-3, the Commission inferred that its 1974 restriction on wireline eligibility for SMR licensing was based upon: (1) the historical distinction between private and common carrier services; (2) the interest in unambiguously labelling SMR providers as private carriers, so that they would not be subjected to state entry and rate regulation; and (3) competitive concerns, such as the public interest in ensuring that SMRs are available as a business opportunity for small entrepreneurs and the desire to prevent

discriminatory interconnection practices by wirelines. Subsequent changes in the Communications Act and the SMR industry have wholly eliminated the need for, and usefulness of, this restriction.

**The Historical Distinction Between Private And  
Common Carrier Services Has Been Replaced By Regulatory Parity**

Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 amended Section 332 of the Communications Act for the purpose of creating regulatory symmetry among similar mobile service. While implementing this legislation, the Commission has determined that SMR systems providing interconnected service will be treated as common carriage services, and that these interconnected SMR services will be regulated with cellular, PCS and other specified mobile services under the Commercial Mobile Radio Service ("CMRS") classification. 47 C.F.R. § 20.9(a); Second Report And Order in Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1451, 1468, 1510 (1994). Also, the Commission has indicated that non-interconnected SMR systems may be classified and regulated under the CMRS rules if they are found, on a case-by-case basis, to be functionally equivalent to CMRS providers. Id. at 1447-48. In other words, most SMR operators will henceforth be common carriers, just like wireline telephone companies.

In its recent Third Report And Order in Implementation of Sections 3(n) and 332 of the Communications Act, FCC 94-212, paras. 10-14 and 37-79, released September 23, 1994, the Commission determined that all CMRS services (including SMR, cellular and Broadband PCS) are competing services or have the reasonable potential to become competing services in the CMRS marketplace, and

they are therefore "substantially similar" services that should be subject to comparable regulatory requirements. At the present time, there are no significant restrictions against wireline telephone companies obtaining cellular licenses, 47 C.F.R. §§ 22.901, 22.902, or Broadband PCS licenses, Broadband PCS Second Report And Order, 8 FCC Rcd 7700, 7751-52 (1993). Therefore, regulatory symmetry requires that there should no longer be any significant restrictions against wireline companies holding SMR licenses.

**Congress Has Preempted All State Entry Regulation  
And Most State Rate Regulation Of CMRS Services**

As indicated above, a second goal of the Commission's 1974 wireline/SMR restriction was the prevention of state entry and rate regulation of SMR services.

This concern has been eliminated by Section 6002(c) of the Omnibus Budget Reconciliation Act of 1993. That provision amended Section 332(c) of the Act: (a) to preempt all state and local entry regulation of CMRS services (including most SMR services) as of August 10, 1994; and (b) to preempt most state and local rate regulation of CMRS services, except in limited cases where the state met its burden of proof that pre-June 1, 1993 rate regulations should be grandfathered for a limited time. Second Report And Order, supra at 1501. Because no states regulated SMR rates prior to June 1, 1993, it does not appear that any states will be permitted by the Commission to engage in "grandfathered" regulation of SMR rates.

In sum, the Omnibus Budget Reconciliation Act of 1993 has

rendered it unnecessary for the Commission to restrict wireline entry into the SMR business, in order to protect SMR providers from state entry and rate regulation.

**Industry Consolidation Has Rendered The Principal SMR Providers Much Larger Than Rural Telephone Companies**

The Commission's early attempts to preserve the SMR service for small entrepreneurs have been largely overtaken by the acquisition program of Nextel Communications, Inc. ("Nextel"), and will be further changed by Nextel's recent or pending mergers with Dial Page, Inc. and OneComm Corp., and acquisition of Motorola's SMR assets. Polar understands that Nextel intends to spend over \$2 billion during the next 2-to-3 years to rebuild its SMR facilities into a digital cellular network of 4,000 cells that will serve 1.5 million customers nationwide. "Old Dispatch Systems Are Ticket To Riches For Former FCC Man," The Wall Street Journal (Wednesday, August 31, 1994), p. A1.

In the presently consolidating SMR industry, Polar and other rural telephone companies represent a significant type of small company that is ready, willing and able to provide localized SMR service within geographic niches. It is ironic that the one of the principal effects of the existing Section 90.603(c) eligibility restrictions has been to limit participation in the SMR industry by rural telephone companies that are much smaller than Nextel.

**Wireline Carriers Have Not Engaged In Discriminatory Interconnection Practices Regarding Mobile Services**

The exemplary record of wireline telephone companies in furnishing nondiscriminatory interconnection to competitors and

potential competitors in the cellular industry demonstrates that they will not engage in discriminatory inter-connection practices with respect to the SMR industry.

As the Commission is well aware, there were once significant cellular industry concerns that wireline telephone companies would employ their control over interconnection facilities to hamper the ability of non-wireline cellular carriers to compete with wireline-affiliated cellular carriers. In Cellular Communications Systems, 86 FCC 2d 469, 496 (1981), the Commission ordered wireline telephone companies to furnish appropriate interconnection to cellular systems upon reasonable demand, and to do so upon terms no less favorable than those offered to affiliated cellular systems and/or independent telephone companies. See also Cellular Communications Systems (Reconsideration), 89 FCC 2d 58, 80-82 (1982); Policy Statement on Interconnection of Cellular Systems, 59 RR 2d 1283, 1283-84 (1986); Cellular Interconnection Proceeding, 2 FCC Rcd 2910, 2912 (1987); and Cellular Interconnection Proceeding (Reconsideration), 4 FCC Rcd 2369, 2370-71 (1989). It is Polar's information and belief that the Commission's cellular interconnection policies have resulted in negotiated interconnection arrangements between wireline telephone companies and cellular carriers, with minimal problems, delays and complaints to regulatory authorities.

The Commission's recent Second Report And Order, supra at 1497-98, extends the interconnection rights of cellular carriers to all CMRS providers, including interconnected SMR providers. It

requires LECs to provide reasonable and fair interconnection for all commercial mobile radio services, and to provide the type of interconnection reasonably requested by CMRS providers. Id. It expressly holds that a "LEC shall not have the authority to deny a CMRS provider any form of interconnection arrangement that the LEC makes available to any other carrier or any other customer, unless the LEC meets its burden of demonstrating that the provision of such interconnection arrangement to the requesting commercial mobile radio service provider either is not technically feasible or is not economically reasonable." Id. at 1498.

Particularly in light of the history of cellular interconnection, the Commission's CMRS interconnection requirements ensure that wireline telephone companies entering the SMR industry will not engage in discriminatory interconnection practices against competing SMR providers.

#### **Structural Separation Is Not Required**

In its Broadband PCS Second Report And Order, supra at 7751-52, the Commission declined to impose structural separation requirements upon the Regional Bell Operating Companies and other wireline telephone companies that may participate in the PCS industry. Likewise, in the Second Report And Order, supra at paras. 218-19, the Commission declined at this time to impose added structural separation requirements upon wireline telephone companies with CMRS affiliates.

Polar believes that imposition of structural separation requirements upon rural telephone companies entering the SMR

industry would entail administrative costs and burdens that would far outweigh any potential benefits. Such costs and burdens would significantly discourage, and in some cases prevent, rural telephone company entry into the SMR business. To the extent that the Commission believes that some protection is needed against potential cross-subsidization and discriminatory pricing, such protection already exists in the form of federal and state accounting safeguards and affiliate transaction rules.

**The Commission's Dispatch Prohibition  
Should Also Be Eliminated**

If Polar and other rural telephone companies are to participate in the SMR industry, Commission's prohibition against the provision of dispatch service by common carriers must also be eliminated. In northeastern North Dakota and other rural areas, there are substantial unmet needs on the part of farmers and ranchers for reasonably priced dispatch services. If Polar and other rural telephone companies are to serve, and compete effectively in, rural SMR markets, they must be able to offer dispatch service as well as interconnected service.

Moreover, as the Commission implements the regulatory symmetry mandated by the Omnibus Budget Reconciliation Act of 1993, the common carrier dispatch prohibition no longer makes sense. If SMR licensees are classified as CMRS providers and treated as common carriage services, Second Report And Order, supra at 1451, 1468, 1510, what non-common carriers will remain to furnish dispatch service?

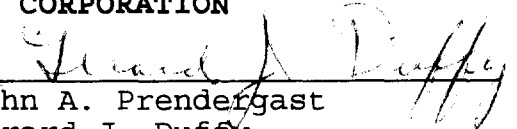
### Conclusion

Polar strongly supports the Commission's proposals to eliminate the existing restrictions upon wireline provision of SMR service and upon common carrier provision of dispatch service. These rule changes would permit Polar and other rural telephone companies to furnish needed SMR services (including dispatch services) to presently unserved and underserved rural areas. Moreover, in light of the Congressional mandate for regulatory symmetry among mobile services and the growth and development of the SMR industry, the Commission's reasons for maintaining these prohibitions no longer apply.

Respectfully submitted,

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